HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No.2599 of 2006

Between:

Y. Ramanjaneyulu … Petitioner

AND

Revenue Divisional Officer,

Anantapur & another. …Respondents.

:: O R D E R ::

Counsel for the Petitioner : Sri S.V.Ramana, Advocate

representing Sri O.Manohar Reddy

Counsel for the Respondents : Government Pleader for Civil

Supplies.

20th FEBRUARY 2006

Per G.S.Singhvi, C.J.

Whether authorisation of a fair price shop dealer can be suspended during the

pendency of enquiry on the allegation of violation of the provisions contained in the Andhra Pradesh State Public Distribution System Control Order, 2001 (for short 'the Control Order') is the question which arises for determination in this petition filed by the petitioner under Article 226 of the Constitution for quashing order dated 3-2-2006 passed by Revenue Divisional Officer, Anantapur (respondent No.1).

The petitioner is a fair price shop dealer of Anumpalli village of Pamidi Mandal, Anantapur District. On receipt of the complaint made by the cardholders of the village that the fair price shop dealer had committed several irregularities including making of fictitious entries in the sales register of Rice and selling of essential commodities at rates higher than those fixed by the State Government, respondent No.1 directed Civil Supplies Deputy Tahsildar, Guntakal to make a preliminary enquiry into the allegations. The latter submitted report with the findings that the allegations levelled against the petitioner are correct. Thereafter, respondent No.1 issued notice dated 4-3-2005 to the petitioner to show cause as to why his authorisation be not cancelled. In all, eight charges were enumerated in the show cause notice and the petitioner was called upon to explain his position. In his reply dated 18-3-2005, the petitioner denied the allegations. After considering the petitioners' reply and adjourning the case on five different dates, respondent No.1 passed order dated 3-2-2006 whereby he posted the case for filing documentary evidence and, at the same time, suspended the authorisation of the petitioner.

The petitioner has challenged the aforementioned order by contending that suspension of authorisation after consideration of the explanation submitted in response to the show cause notice amounts to imposition of substantive penalty and as there is no provision under the Control Order for imposing such penalty, the order passed by respondent No.1 is liable to be declared as nullity. He has further pleaded that the action taken by respondent No.1 is vitiated due to violation of the rules of natural justice because before ordering suspension of the authorisation, respondent No.1 did not give him reasonable opportunity of representing his case.

When the writ petition was listed before the learned Single Judge, counsel for the petitioner relied on order dated 20-12-2004 passed by another Single Judge in Writ Petition No.2368 of 2004 – B.Veera Reddy v. Joint Collector, Anantapur – and argued that in view of the law laid down in that case, suspension of the petitioners' authorisation should be declared illegal and quashed.

The learned Single Judge referred to Paragraph 5(4) of the Control Order and opined that the restrictive construction placed on that paragraph by the Co-ordinate Bench does not represent correct legal position. He, therefore, referred the matter to the Division Bench.

We have heard learned counsel for the petitioner and the learned Government Pleader for Civil Supplies and perused the record.

Paragraph 5(4) of the Control Order which empowers the appointing authority to suspend or cancel the authorisation reads as under:-

> 5(4) The appointing authority may, at any time, where at the request of the authorized fair price shop or authorized establishment or suo motu after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, add to, amend, vary, suspend or cancel the authorisation issued or deemed to be issued to him under this clause."

In Veera Redy's case (supra), the learned Single Judge considered the question whether authorisation of the fair price shop dealer could be suspended after issuing show cause notice and considering the explanation, and held that such an action amounts to imposition of substantive penalty for a particular period and such an order does not come within the ambit of paragraph 5(4) of the Control Order. The relevant extract of the order of the learned Single Judge is reproduced below:-

> "The authorisation of the petitioner was suspended after issuing a show cause notice and considering the explanation offered by the petitioner. Under sub-clause (4) of Clause 5 of the A.P. State Public Distribution System Control Order, 2001, the appointing authority is empowered to cancel or suspend the authorisation of a dealer after conducting an enquiry. It is permissible to suspend the authorisation pending enquiry, even without issuing such notice. Where a suspension is ordered, after issuing the show cause notice and considering the explanation, it has to be only by way of a substantive penalty for a particular period. Suspension of a dealership, after issuance of the show cause notice, by its very nature, cannot be pending enquiry. The reason is that the enquiry is already held and nothing needs to be done further. Through the impugned proceedings, 2nd respondent suspend the authorisation of the petitioner pending enquiry, after issuing a show cause notice and considering the explanation, Hence, there is a clear contradiction in terms."

In the Reference Order, the learned Single Judge disagreed with the above interpretation of paragraph 5(4) of the Control Order and observed:-

> "The provisions of paragraph 5(4) of the Order enable the appointing authority, at any time or suo motu and after making such enquiry, as is necessary; and for the reasons to be recorded in writing, inter alia, to suspend the authorisation issued or deemed to be issued under the clause. The suspension of authorisation may be, pending inquiry, or as a measure of substantive punishment. In the context of the fact that the Order is one issued for control and regulation of essential commodities and for effectuating the public distribution system, principles of purposive construction of a regulatory regime are perhaps to be applied.
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> The provisions of paragraph 5 (4) per se do not postulate that the order of suspension of authorisation, pending enquiry, cannot be passed after the issuance of a show cause notice. The issuance of a show cause notice is on a threshold satisfaction of the commission of misconduct by an authorisee. Such threshold satisfaction may be the product of a complaint or suo motu. On the issuance of a show cause notice, the response of the authorisee is solicited and received and on consideration of the allegations set out in the show cause notice or a charge memo, the explanation of the authorisee and the connected record, a final determination is made as to the commission of misconduct. If a misconduct is discerned, the appropriate measure of sanction is to be imposed. Till such punishment is imposed, the several stages, may be generically characterized a 'pending inquiry'.
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> To restrict the amplitude of the granted power of the appointing authority to suspend an authorisee of a fair price shop pending inquiry only before issuance of a show cause notice would be to restrict the power conferred in wide terms to the Regulator of an essential commodity. Established principles of statutory interpretation as applicable to the interpretation of ameliorative legislative instruments do not perhaps justify such a restrictive construction of widely expressed regulatory power."

In our opinion, the expression 'at any time' used in paragraph 5(4) of the Control Order is of wide import and there is no reason to restrict its applicability upto the stage of show cause notice. There can be no doubt that paragraph 5(4) of the Control Order is essentially a regulatory piece of delegated legislation and the power vested in the appointing authority to suspend or cancel the authorisation is to be exercised in larger public interest. The language of paragraph 5(4) nowhere suggests that power to suspend authorisation can be exercised only at the stage of show cause notice and not during the pendency of enquiry which is preceded by show cause notice. In a given case, the fair price shop dealer may, after receiving show cause notice make a demand for further enquiry or ask for an opportunity to

adduce evidence to controvert the allegations levelled against him. During the pendency of such enquiry, it may come to the notice of the appointing authority that the dealer has been indulging in irregularities even after issue of show cause notice. The gravity of the allegations enumerated in the show cause notice may also be compounded on account of the developments which may take place during the pendency of enquiry or on the basis of the material which may come to the notice of the appointing authority after issue of show cause notice. In such a case, the appointing authority can exercise power under paragraph 5(4) of the Control Order and suspend the authorisation of the dealer during the pendency of enquiry.

In our view, the exercise of power of suspension of authorisation after issuing show cause notice and considering the explanation of the fair price shop dealer cannot be equated with imposition of substantive penalty for a particular period. In its very nature, the power of suspension of authorisation is to be exercised as interim measure to prevent the fair price shop dealer from tampering with the evidence or continuing with similar irregularities. Therefore, suspension of authorisation during the pendency of enquiry cannot be termed as punishment.

In view of the above analysis of paragraph 5(4) of the Control Order, we are unable to approve the view of the learned Single Judge in **Veera Reddy's case** (supra) that an order of suspension of authorisation cannot be passed after issuing show cause notice and considering the explanation. Rather, we agree with the view expressed in reference order that there is no warrant to give a restrictive interpretation to paragraph 5(4) of the Control Order.

As a corollary to the above, we hold that respondent No.1 did not commit any jurisdictional error by suspending the authorisation of the petitioner.

The petitioner's challenge to the order of suspension on the ground of denial of opportunity of hearing does not deserve to be entertained at this stage because an effective alternative remedy of appeal is available to him and also because we are prima facie of the view that the accusation made by him against respondent No.1 of being unreasonable in not granting adjournment does not appear to be well founded. The record of the case shows that respondent No.1 had adjourned the hearing of the case on at least four occasions at the instance of the petitioner. Therefore, his complaint of denial of hearing cannot be accepted.

For the reasons mentioned above, the writ petition is dismissed. However, liberty is given to the petitioner to avail statutory remedy of appeal. We also direct that if he files appeal within seven days from today, then the same shall be entertained, heard and disposed of by the appellate authority i.e., Joint Collector, Anantapur without being influenced by the fact that the writ petition filed against the order of suspension of authorisation has been dismissed by this Court.

G.S.SINGHVI, C.J.

20th February, 2006.

G.BHAVANI PRASAD, J.

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